IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

WEDNESDAY, THE 25TH OCTOBER 2006 / 3RD KARTHIKA 1928

CRL.A.No. 849 of 2002()

CC.599/1998 of JUDL. MAGISTRATE OF FIRST CLASS, VAIKOM

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APPELLANT: COMPLAINANT

A.U.ABRAHAM, AMBALTHUMVELIYIL,
RUBBER DEALER, RAJI RUBBERS OWER,
VARIKKAMKUNNU MURI, VELLOOR VILLAGE,
VAIKOM TALUK.

BY ADV. SRI.MATHEW PHILIP EDAPPALLIL

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
GOVERNMENT PLEADER.

2. AMBATTU ENTERPRISES, RUBBER DEALERS,
KANJIKKUZHI, KOTTAYAM.

3. SANKARLAL, PARTNER, AMBATTU,
ENTERPRISES, RUBBER DEALER, KANJIKKUZHI, KOTTAYAM.

BY PUBLIC PROSECUTOR SRI.D.ANIL KUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 25/10/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.M. JAMES, J.

Crl.App. No. 849 of 2002

Dated this the 25th October, 2006.

JUDGMENT

The complainant is the appellant. He preferred C.C.No.599/1998, on the file of the Judicial First Class Magistrate Court, Vaikom, under Section 138 of the Negotiable Instruments Act, in short 'the Act'.

2. The complainant examined himself as PW.1, and marked 12 documents. The accused, respondents 2 and 3, had examined three witnesses and marked 5 documents. The learned Magistrate, after appreciation of the evidence, found that the oral and documentary evidence adduced on the side of the defence shows that the complainant did not return Ext.P1 cheque for an amount of Rs.95,000/=, though the accused discharged liability of the said amount. Therefore, acquitted the accused and the complaint was dismissed. Hence, this appeal.

2. The case, as put forward by both sides, show that there was a transaction between the complainant and the accused, for an amount of Rs.1,75,000/=. The evidence available on record, through PW.1, the complainant, reveal, as admitted by him, that an amount of Rs.80,000/= was received by him in cash. The contention of the accused is that for the balance amount of Rs.95,000/=, though Ext.P1 cheque was issued, it was extinguished through payments of Exts.P9 to P12, and another cheque for the entire amount of Rs.95,000/=.

3. I have perused the cheques covered under Exts.P9 to P12, it comes to Rs.70,000/=, and another cheque for Rs.25,000/= was also issued and paid. The total amount of Rs.95,000/= is thus extinguished, after due payment.

4. However, the learned counsel appearing for the appellant submits that the seal of the complainant's company had been forged, and the amount had been drawn by some one, with whom the appellant has got no connection. Counsel also submits that a criminal complainant has been given to the local police for forging the seal of the company of the complainant, and making use of the

same, for encashing the amount falsely through third parties, thus making it to appear that the amount having been paid to the complainant, appellant. But there is nothing produced before me to show that the appellant has made any complaint against the concerned banks, through which Exts.P9 to P12 had been encashed.

5. Though notice has been issued to respondents 2 and 3, and the service is complete, there is no representation from any of them. I heard the arguments advanced by the learned counsel, Sri.Mathew Philip, on behalf of the appellant, complainant.

6. During the cross examination of PW.1, it was suggested to him that on different dates, under Exts.P9 to P12 and through another cheque, the amounts totalling to Rs.95,000/= was paid to him, and thus the entire amount due to him, was cleared. However, it was denied by PW.1. As respondents 2 and 3 had discharged their responsibility by rebutting the evidence adduced by the appellant, complainant, the burden further shifted on the appellant to prove otherwise. The same has not been done by the appellant during the trial. No steps had also been taken to call and examine any of the witnesses or produce any documents or effectively challenge

Exts.P9 to P12 cheques. Therefore, I find no reason to accept the submissions of the learned counsel for the appellant that he has not received the money due to him.

7. If the appellant has initiated any criminal steps against any one, including the concerned banks or the persons who drew the money, after taking the seal of the appellant establishment, which the counsel alleges as having forged, it is for the appellant to work out the legal remedies. Under Section 138 of the Act, it is the prima facie duty of the accused to rebut the presumption available under Sections 118 and 139 of the Act. Once such presumptions are rebutted, the burden is on the appellant to prove otherwise. When such burden is not discharged, according to the law, the appellant cannot come and ask for a remand, praying for another opportunity to adduce further evidence against the rebutted evidence, which has been accepted by the court below. No reason is given by the appellant for not adducing any such evidence before the court below or producing such documents before this Court, with the appeal, so as to prove the bona fide of the appellant.

8. After going through the materials, and evidence available on record, I find that respondents 2 and 3, accused 1 and 2, adduced sufficient evidence to show that an amount of Rs.95,000/= due to the complainant, appellant, had been paid back, as had been put to the appellant, when he was examined as PW.1. Therefore, I find nothing to interfere with the findings of the learned Magistrate. The prayer of the counsel, for a further remand, would unnecessarily protract the matter.

9. If any criminal complaint is filed, as submitted by the counsel, and is being pursued, according to the law, the complainant may proceed with the same, in the appropriate forum.

In the circumstances of this case, the appeal fails, and, therefore, is dismissed.

J.M. JAMES,
JUDGE

nj.

J.M. JAMES, J.

Crl.App.No. 849 of 2002

JUDGMENT

25th October, 2006.